

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

GREGORY E. HOUSE

VS.

CASE NO. 2:02r17-KS

UNITED STATES OF AMERICA

ORDER

This cause is before the Court on Motion to Correct Sentence pursuant to Federal Rules of Criminal Procedure 11(c)(1) and for specific performance of plea agreement [64] and the Court considering same finds as follows:

That the motion attacks the sentence that Movant received on June 16, 2004. On January 23, 2006, Movant filed a Motion to Vacate, Set Aside or Correct Sentence Pursuant to § 2255 [54]. By order of this Court dated August 22, 2006, [57], this Court dismissed the petition with prejudice.

The motion before the Court is a motion attacking the Movant's sentence and, pursuant to 28 U.S.C. § 2255(h), "a second or successive motion must be certified as provided in § 2244 by a panel of the appropriate Court of Appeals to contain...." There is no certification from the 5th Circuit Court of Appeals that the motion contains the required allegations. Section 11(c)(1) Fed. R. Crim. P. is the rule setting the procedure for a plea agreement. This motion seeks to enforce a plea agreement and is in the nature of a motion pursuant to Rule 28 § 2255. Additionally, pursuant to 28 U.S.C. § 2255(f), a one year period of limitations shall apply to a motion under this section.

For the reasons above described, this Court finds that the motion has not been certified by the Fifth Circuit Court of Appeals to contain the appropriate allegations and that it is barred by

the one year period of limitations and, therefore, the motion is dismissed.

SO ORDERED this, the 3rd day of June, 2009.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE